ployees were reinstated and the picketing stopped. That same day, the Union wrote Page, objecting to the Company's action in meeting with the employee committee members and in cancelling the scheduled bargaining session (Pet. App. 4-5, 25, 27, 32). The Company never responded to the letter and no further bargaining sessions between it and the Union were held (Pet. App. 5, 24).

On September 23, Page, in a speech to all the employees, stated that the Union was dead at the plant, that he would deal with an employee committee concerning employee complaints, and that additional benefits including a 25-cent per hour pay increase would be forthcoming (Pet. App. 5). The promised additional benefits were subsequently put into effect (Pet. App. 5; J.A. 57-58).

B. The Decisions Below

The Board found that the in-plant cessation of work by the 97 employees to protest the discharge of 6 fellow employees, which "lasted only a few hours and did not extend beyond the employees' normal working hours, and [during which] no employee sought to bar or exclude Company officials," was not an unlawful seizure or sitdown, but rather concerted activity protected by Section 7 of the Act. Accordingly, it held that the Company violated Section 8(a)(3) and (1) of the Act by discharging the employees for engaging in such activity (Pet. App. 29).[3] The

[3] Chairman Miller dissented from this finding (Pet. App. 18, n. 1).

Board further found that the Company violated Section 8(a)(5) and (1) of the Act by refusing to meet and negotiate with the Union as the exclusive representative of the employees, bargaining directly with the employees, unilaterally granting them higher wages and better working conditions than it had offered the Union, and other similar conduct (Pet. App. 37). The Board ordered the Company, *inter alia*, to cease and desist from the unfair labor practices found and to bargain collectively with the Union upon request (Pet. App. 40-49).[4]

The court of appeals found "no merit to any of the Company's objections," sustained the Board's findings and conclusions, and enforced its order (Pet. App. 1-16).

ARGUMENT

1. The court below properly concluded that the peaceful and orderly cessation of work by the 97 employees who sat down at their jobsites for a short while to protest the discharge of their 6 fellow employees[5] was concerted activity protected by Section

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[4] The Board provided no affirmative relief for the 97 employees, since the Company had reinstated them before any backpay obligation had accrued (Pet. App. 31, 37).

[5] As the court below noted (Pet. App. 13): "It is well settled that a concerted work stoppage to protest even a lawful discharge of a fellow employee is protected by Section 7 of the Act." *National Labor Relations Board* v. *Phaostron Instrument and Electronic Co.*, 344 F. 2d 855, 858 (C.A. 9); *National Labor Relations Board* v. *Puerto Rico Rayon Mills, Inc.*, 293 F. 2d 941, 946 (C.A. 1); *National Labor Relations Board* v. *Solo Cup Co.*, 237 F. 2d 521 (C.A. 8); *National Labor Re-*

7 of the Act, and "not contrary to [this] Court's decision in *Fansteel*" [6] (Pet. App. 13). As the court pointed out (Pet. App. 11):

> We find no facts in the instant case tending to show that the employees were claiming to hold the premises in defiance of the owner's right of possession. The employees had worked for part of the work shift already and the sit-down did not, nor did it threaten to carry over into the next shift. Furthermore, the employees left immediately when requested to do so by the police. • • •

Such conduct is a far cry from the seizure of the plant for some ten days and the violent resistance to attempts by police authorities to compel obedience to an injunction order requiring surrender of the premises, which were present in *Fansteel*, 306 U.S. at 248-249, 252. Indeed, in *National Labor Relations Board* v. *American Manufacturing Company*, 106 F. 2d 61 (C.A. 2), which involved a work stoppage similar to that here,[7] the court of appeals rejected

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lations Board v. *J. I. Case Co.*, 198 F. 2d 919, 921-923 (C.A. 8), certiorari denied, 345 U.S. 917.

[6] *National Labor Relations Board* v. *Fansteel Metallurgical Corp.*, 306 U.S. 240.

[7] There, employees engaged in a temporary work stoppage to compel the employer to bargain in good faith with their union representative. When company officials refused to talk to the employees and told them either to go back to work or leave the premises, some obeyed but others "stood around in groups talking." At noon, they went to lunch and, when they came back with the intention of returning to work, 14 employees were discharged. 106 F. 2d at 67.

the contention that this activity was an illegal sit-down strike, stating (106 F. 2d at 68):

> They certainly were not claiming to hold the premises in defiance of the right of possession of the owner and we regard the case as no different from that of an ordinary strike where work has ceased because of an unfair labor practice.

This Court, with a modification not material here, summarily affirmed the judgment of the Court of Appeals for the Second Circuit, notwithstanding the company's contention that the decision was in conflict with *Fansteel. American Manufacturing Company* v. *National Labor Relations Board*, 309 U.S. 629.[8]

The decision below is likewise consistent with the decisions of other courts of appeals which have held that peaceful in-plant protestors do not forfeit the protection of the Act when, as here, "[t]he alleged 'sitdown' interfered with production no more than a simple cessation of work by these employees would have." *Golay & Co.* v. *National Labor Relations Board*, 371 F. 2d 259, 262 (C.A. 7), enforcing as modified, 156 NLRB 1252, 1260-1263, certiorari denied, 387 U.S. 944. Accord: *National Labor Relations Board* v. *Serv-Air, Inc.*, 401 F. 2d 363, 365 (C.A. 10); *Olin Industries, Inc.* v. *National Labor Relations Board*, 191 F. 2d 613 (C.A. 5), certiorari denied, 343 U.S. 919. See also *National Labor Relations Board* v. *Hanes Hosiery Division*, 413 F. 2d

[8] See Brief for Petitioner in that case, October Term, 1939, No. 664, pp. 18-20.

457, 458, n. 1 (C.A. 4); *National Labor Relations Board* v. *Kennametal, Inc.*, 182 F. 2d 817, 818-819 (C.A. 3).[9]

2. Petitioner's contention that the Board erred in finding that it violated its bargaining obligation to the Union (Pet. 14-15) likewise does not merit review. It has long been settled that it is a violation of the Act for an employer to disregard the bargaining representative and negotiate directly with individual employees, whether a majority or minority, with respect to wages, hours, and working conditions. *Medo Corp.* v. *National Labor Relations Board*, 321 U.S. 678, 683-685. Similarly, it is settled that an employer violates the Act by increasing wages and making other improvements in working conditions without first consulting the union about such changes. *National Labor Relations Board* v. *Katz*, 369 U.S. 736, 745-747.

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[9] The cases relied on by petitioner are distinguishable. *Stewart Die Casting Corp.* v. *National Labor Relations Board*, 114 F. 2d 849, 855 (C.A. 7), involved strikers who took possession of the plant for a period of 24 hours; *McNeely & Price* v. *National Labor Relations Board*, 106 F. 2d 878 (C.A. 3), involved a sit-down strike lasting six days and terminating only upon eviction pursuant to court order (6 NLRB 800, 812); and, in *Cone Mills Corporation* v. *National Labor Relations Board*, 413 F. 2d 445, 450-454 (C.A. 4), the court found that the employees had bypassed established grievance procedures through which the complaint could have been processed, and that the atmosphere was one of obstruction and threatened violence.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted.

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